

United States  
Circuit Court of Appeals

For the Ninth Circuit. /

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LEONG CHONG WING,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

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Transcript of Record

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Upon Appeal from the District Court of the United States  
for the Western District of Washington,  
Northern Division

FILED  
DEC - 4 1937

PAUL P. O'BRIEN,  
CLERK



United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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LEONG CHONG WING,  
Appellant,  
vs.  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF COUNSEL

Mr. JOHN F. GARVIN,

Attorney for Appellant,

1122 Northern Life Tower,

Seattle, Washington.

Messrs. J. CHARLES DENNIS and

F. A. PELLEGRINI,

Attorneys for Appellee,

222 Post Office Building,

Seattle, Washington. [1\*]

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\*Page numbering appearing at the foot of page of original **certified**  
Transcript of Record.

United States District Court, Western District of  
Washington, Northern Division

November Term, 1936

No. 44282

UNITED STATES OF AMERICA,

Plaintiff,

LEONG CHONG WING,

alias Lew Ching Wing,

“ Yue Sing,

“ Yoe Sing,

“ Yoe Sing Wing,

LYLE G. GRAY,

Defendants.

### INDICTMENT

United States of America,  
Western District of Washington,  
Northern Division—ss.

Vio. Sec. 174, Title 21, U. S. C. A. and Sec.  
1593 (b), Title 19, U. S. C. A.

The grand jurors of the United States of America  
being duly selected, impaneled, sworn, and charged  
to inquire within and for the Northern Division of  
the Western District of Washington, upon their  
oaths present: [2]

## COUNT I.

(174-21)

That Leong Chong Wing, alias Lew Ching Wing, alias Yue Sing, alias Yoe Sing, alias Yoe Sing Wing, and Lyle G. Gray, hereinafter called the defendants, to wit: On or about the twelfth day of February, 1937, at the City of Seattle, County of King, in the Northern Division of the Western District of Washington, and within the jurisdiction of this Honorable Court, then and there being, did then and there violate the Act of February 9, 1909, as amended by the Act of May 26, 1922, in that they, the said defendants, did then and there willfully, unlawfully, knowingly, feloniously and fraudulently receive, conceal, buy, sell and facilitate the transportation and concealment after importation of a certain derivative and preparation of opium, to wit: One (1) ounce of opium prepared for smoking, which said preparation of opium, as the defendant then and there well knew had been imported into the United States contrary to law.

Against the peace and dignity of the United States of America and contrary to the form of the statute of the United States of America in such case made and provided. [3]

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

## COUNT II.

(1593 (b)-19)

(Dismissed 8/5/37. J. C. B.)

That Leong Chong Wing, alias Lew Ching Wing, alias Yue Sing, alias Yoe Sing, alias Yoe Sing Wing, and Lyle G. Gray, whose true and full names are to the Grand Jurors unknown, and each of them, on or about the twelfth day of February, in the year of our Lord one thousand nine hundred thirty-seven, at the City of Seattle, in the Northern Division of the Western District of Washington, and within the Customs Collection District of Washington and within the jurisdiction of this Court, then and there being, did then and there knowingly, wilfully, unlawfully, feloniously and fraudulently receive, conceal, buy, sell, and facilitate the transportation and concealment of certain dutiable merchandise, to-wit: One (1) ounce of opium prepared for smoking, a more particular description of the said merchandise being to the Grand Jurors unknown, which said merchandise had theretofore been imported and brought into the United States from a foreign country to the Grand Jurors unknown, contrary to law, that is to say, without submission for inspection by any officer of the Customs Service of the United States, and without reporting the entry of said merchandise to any officer of the Customs Service of the United States and without the payment of any duty thereon, all of which they, the said Leong Chong Wing, alias Lew Ching Wing, alias Yue Sing, alias Yoe Sing,

alias Yoe Sing Wing, and Lyle G. Gray, then and there well knew; contrary to the form of the statute in such case made and provided, and against the peace and [4] dignity of the United States of America.

J. CHARLES DENNIS

United States Attorney

F. A. PELLEGRINI

Assistant United States Attorney

A true bill.

GLEN McLEOD,

Foreman.

J. CHARLES DENNIS.

[Endorsed]: Presented to the Court by the Foreman of the Grand Jury in open Court, in the presence of the Grand Jury, and filed in the U. S. District Court Feb. 26, 1937. Edgar M. Lakin, Clerk. By S. E. Leitch, Deputy. [5]

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[Title of Court and Cause.]

### ARRAIGNMENT AND PLEA

Now on this 15th day of March, 1937, Gerald D. Hile, Assistant United States District Attorney appearing for the plaintiff, the defendant Leong Chong Wing, alias Lew Ching Wing, alias Yue Sing, alias Yoe Sing, alias Yoe Sing Wing, accompanied by his counsel John F. Garvin, Esq., comes into open court for arraignment and answers that his true name is Leong Chong Wing. The defendant waives the formal reading of the indictment



and now enters a plea of not guilty as to both counts of the indictment, subject to motions and other pleadings that may be filed. .

Journal No. 24, page 540. [6]

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[Title of Court and Cause.]

AFFIDAVIT

United States of America,  
State of Washington,  
County of King—ss.

Leong Chong Wing, being first duly sworn, upon his oath deposes and says: That on the 12th day of February, 1937, at the hour of about two o'clock p. m. he was riding in his automobile. That certain agents and officers of the United States, without any warrant for his arrest or warrant to search his car, arrested affiant and searched his car; that your affiant had committed no crime in the presence of said officers and that they had no reasonable ground to suspect that affiant had committed a felony; that affiant was not guilty of any breach of the public peace; that said officers searched your affiant's car and took therefrom a certain quantity of narcotic drugs; that your affiant has grounds to believe and does believe that said narcotics will be used against him in the trial of said cause; that there was no legal authority whatsoever for said search. Further affiant sayeth not.

LEONG CHONG WING

Subscribed and sworn to before me this 10th day of March, 1937.

[Seal]                      WARREN HARDY,  
Notary Public in and for the State of Washington,  
Residing at Seattle.

[Endorsed]: Filed Mar. 15, 1937. [7]

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[Clerk's Note: Affidavits of David Tow, Lonnie McIntosh, M. L. Hanks, M. W. Pevonak, G. W. Harlow, G. C. Polite, Leong Chong Wing, and Lyle G. Gray are here omitted as same are set forth in the printed record as follows: David Tow p. 56, Lonnie McIntosh p. 54, M. L. Hanks p. 51, M. W. Pevonak p. 47, G. W. Harlow pp. 44 and 53, G. C. Polite pp. 52 and 58, Leong Chong Wing pp. 42 and 62, Lyle G. Gray p. 64.]

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[Title of Court and Cause.]

### MOTION TO STRIKE

Comes now the defendant and moves the Court to strike all hearsay portions of the affidavits of Federal customs agents and narcotic agents filed herein controverting the motion and affidavits to suppress.

JOHN F. GARVIN

Attorney for Defendants

[Endorsed]: Filed Mar. 26, 1937. [26]

[Title of Court and Cause.]

DEMURRER AND MOTIONS HEARD  
AND OVERRULED

Now on this 26th day of March, 1937, F. A. Pellegrini, Assistant United States District Attorney, appearing for the plaintiff, and John F. Garvin, Esq., appearing for the defendant, this cause comes on for hearing on Demurrer to Indictment; Motion to Quash Indictment; Motion to suppress evidence; Motion to elect; Motion to strike alias names from indictment; Motion to make Count II of the Indictment more definite and certain; Oral motion to strike conclusions of law in plaintiff's controverting affidavits on motion to suppress.

Arguments of counsel are heard on the demurrer and each and all of said motions. The demurrer is overruled, and each and every of the motions is denied, and an exception allowed defendant to each and every of said rulings of the Court.

Journal No. 24, page 568. [32]

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[Title of Court and Cause.]

TRIAL

EXCERPT SHOWING DISMISSAL OF COUNT  
II OF INDICTMENT

Now on this 5th day of August, 1937, F. A. Pellegrini, Assistant United States District Attorney appearing for the plaintiff, John F. Garvin, Esq., appearing for the defendants, Leong Chong Wing and Lyle G. Gray, who are both present in court,



this cause is called for trial, both sides announcing they are ready. On oral motion of the United States District Attorney, Count II of the Indictment is dismissed. A jury is empanelled and sworn as follows: \* \* \*

Journal No. 24, page 853. [33]

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[Title of Court and Cause.]

### VERDICT

We, the jury in the above-entitled cause, find the defendant Leong Chong Wing is guilty as charged in Count I of the Indictment herein; and

Further find the defendant Lyle G. Gray not guilty as charged in Count I of the Indictment, being by the Court instructed so to do.

J. McLAIN GIBBS

Foreman

[Endorsed]: Filed Aug. 5, 1937. [34]

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[Title of Court and Cause.]

### MOTION FOR NEW TRIAL

Comes now the defendant and moves the Court for an order granting a new trial herein upon the following grounds:

#### I.

Insufficiency of evidence to justify the verdict of the jury.

## II.

Error of law occurring in the trial excepted to by the defendant.

## III.

Denying defendant's Motion for Directed Verdict.

JOHN F. GARVIN

Attorney for Defendant

Received a copy of the within Motion for New Trial this 7th day of Aug. 1937.

J. CHARLES DENNIS

Attorney for Pltff.

[Endorsed]: Filed Aug. 7, 1937. [35]

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[Title of Court and Cause.]

ORDER (DENYING NEW TRIAL AND  
MOTION IN ARREST OF JUDGMENT)

Now on this 9th day of August, 1937, the defendant, Leong Chong Wing, comes into Court accompanied by his counsel, John F. Garvin, Esquire, for sentence on Count I of the Indictment. Defendant, Leong Chong Wing, submits motion for a new trial and oral motion in arrest of judgment. The Court rules denying all pending motions of said defendant and exceptions are allowed.

Done in open Court this 9th day of August, 1937.

JOHN C. BOWEN,

Judge.

Presented by

JOHN F. GARVIN.

[Endorsed]: Filed Aug. 9, 1937. [36]

United States District Court, Western District of  
Washington, Northern Division

No. 44282

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LEONG CHONG WING, et al.,

Defendants.

JUDGMENT AND SENTENCE.

Comes now on this 9th day of August, 1937, the said defendant Leong Chong Wing into open Court for sentence, and being informed by the Court of the charges herein against him and of his conviction of record herein, he is asked whether he has any legal cause to show why sentence should not be passed and judgment had against him, and he nothing says, save as he before hath said.

Wherefore, by reason of the law and the premises, it is

Considered, ordered and adjudged by the Court that the said defendant Leong Chong Wing is guilty as charged in Count I of the Indictment of a violation of Section 174, Title 21, U. S. C. A. (Receiving, concealing, buying and selling, and facilitating the transportation and concealment after importation of opium imported contrary to law), and that he be committed to the custody of the Attorney General of the United States, or his authorized representative, for imprisonment in the United States Penitentiary at McNeil Island, Washington, or in

such other like institution as he may by law designate for a period of two years, and that he pay a fine to the United States of America in the sum of five hundred dollars (\$500), and that civil execution issue therefor.

Done in open Court this 9th day of August, 1937.

JOHN C. BOWEN

United States District Judge

Presented by:

F. A. PELLEGRINI

Asst. United States Atty.

[Endorsed]: Filed Aug. 9, 1937. [37]

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[Title of Court and Cause.]

## NOTICE OF APPEAL

### I.

Name and address of appellant: Leong Chong Wing, 3802 Dakota St., Seattle, Washington.

### II.

Name and address of appellant's attorney: John F. Garvin, 1122 Northern Life Tower, Seattle, Washington.

### III.

Offense: Violation of Section 174, Title 21, U. S. C. A. of the Penal Code of the United States.

### IV.

Date of judgment: Aug. 9, 1937.



V.

Brief description of judgment or sentence: count one, confinement in the Federal Penitentiary at McNeils Island for a term of two years and a fine of \$500 to be recovered as a civil judgment.

VI.

Name of place where appellant is now confined, if not on bail: Appellant is now at liberty on bail.

I, the above named appellant hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the Judgment above mentioned on the grounds set forth below.

LEONG CHONG WING

Appellant

Dated, August 9, 1937. [38]

Grounds of appeal:

I.

That there was no evidence nor was there any reasonable inference from the evidence to sustain the charges contained in Count I of the indictment and that the evidence was insufficient to justify the verdict of the jury against the defendant herein.

II.

Errors of law that occurred during the trial which were to the prejudice of the defendant and which were excepted to at the time by the defendant.

## III.

Misconduct of the Assistant District Attorney, excepted to by the defendant.

## IV.

The court erred in denying the defendant's challenge to the sufficiency of the evidence at the conclusion of the Government's case made on behalf of the defendant and excepted to by the defendant at the time.

## V.

The court erred in refusing to sustain a challenge at the conclusion of all of the evidence which was made on behalf of the defendant and upon the ruling of the court duly excepted to.

## VI.

The court erred in failing to sustain the defendant's motion to suppress the evidence herein to which exception was taken.

## VII.

The court erred in admitting the Government's Exhibit One in evidence to which the defendant excepted.

## VIII.

The court erred in failing or refusing to sustain the motion to suppress made during the progress of the trial, to which the defendant excepted. [39]

## IX.

The court erred in refusing to grant a directed verdict herein, to which ruling defendant excepted.

X.

The court erred in refusing to grant a motion for a new trial herein, to which the defendant duly excepted.

JOHN F. GARVIN

Attorney for Leon Chong Wing

Received a copy of the within Notice of Appeal this 9th day of Aug., 1937.

J. CHARLES DENNIS

United States Attorney

[Endorsed]: Filed Aug. 9, 1937. [40]

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[Title of Court and Cause.]

APPEAL BOND OF LEONG CHONG WING.

Know All Men By These Presents:

That we, Leong Chong Wing as principal, and Look Ham and Harry Woo, as surety, and each of us, are held and firmly bound unto the United States of America in the full and just sum of Thirty-five Hundred Dollars U. S. Government Bonds for which have been deposited with the Clerk to be paid to United States of America, to which payment, well and truly to be made we bind ourselves, our heirs, executors, administrators, and assignees entirely and severally by these presents.

Sealed below with our seals and dated this 9th day of August, 1937.

Whereas, on the 5th day of August, 1937, in the District Court of the United States for the Western District of Washington, Northern Division, in a cause pending in said Court between the United States of America as plaintiff and Leong Chong Wing as defendant, being numbered 44282 of the records of the office of the Clerk of said Court, a jury returned a verdict against the said Leong Chong Wing judging him guilty as charged in Count 1 of the Indictment in said cause, charging him with violation of Section 174, Title 21, U. S. C. A. of the Penal Code of the United States;

Whereas, formal judgment and sentence in said cause was duly postponed by the above entitled Court until August 9, 1937; and

Whereas, said Leong Chong Wing was thereafter on August 9, 1937, duly sentenced by the Court to the custody of the Attorney General of the United States, to be confined in U. S. Penitentiary, McNeill's Island, for two years and to pay to the United States a fine of \$500.00, and that formal judgment and sentence having been filed in the office of the Clerk of the above entitled Court against said Leong Chong Wing, and [41]

Whereas, said Leong Chong Wing, principal herein, desires to appeal from such judgment and sentence so rendered in the above cause against him to the United States Circuit Court of Appeals for the 9th Circuit, and

Whereas, said Leong Chong Wing, principal, intends diligently to pursue all steps in prosecuting his appeal from said judgment and sentence;



Now, Therefore, the condition of the above obligation and recognizance is such that if said Leong Chong Wing, principal herein, shall personally appear before the United States District Court for the Western District of Washington, Northern Division, in the City of Seattle, Washington, in said district, from time to time and from term to term thereafter as may be ordered by the Court, and then and there obey the judgment of said Court, and not depart from the jurisdiction of said Court without leave therefrom; and that this bond and recognizance is further conditioned that said Leong Chong Wing, principal, shall be and appear either in person or by attorney in United States Circuit Court of Appeals in the 9th Circuit at San Francisco, California, or such city as may be designated by said Court for hearing on said appeal, on such day or days as may be appointed for the hearing on said cause in the said Court and diligently prosecute his appeal and abide by and obey all orders made by the United States Circuit Court of Appeals in said cause, and shall surrender himself in execution of any judgment or sentence appealed from by said Leong Chong Wing, principal herein, from the District Court of the United States for the Western District of Washington, Northern Division, as the said United States Circuit Court of Appeals for the 9th Circuit may direct, if the judgment and sentence appealed from and against him be affirmed or the Writ of Errors on appeal be dismissed; and if he shall appear for trial in the District Court of

the United States for the Western District of Washington, Northern Division, on such day or days as may be appointed [42] for a retrial of said cause before said District Court, and abide by and obey all orders made by said Court, provided the judgment and sentence against him shall be affirmed and/or reversed by the United States Circuit Court of Appeals for the 9th Circuit, and render himself in execution of the judgment herein, should said judgment and sentence be affirmed, then the above obligation to be void; otherwise to be and remain in full force, virtue and effect.

LEONG CHONG WING,  
Principal.

LOOK HAM,  
HARRY WOO,  
Surety.

Approved this 9th day of August, 1937.

JOHN C. BOWEN,  
District Judge.

Presented by:

JOHN F. GARVIN,  
His Attorney.

O. K. as to form.

J. CHARLES DENNIS,  
United States Attorney.  
F. A. PELLEGRINI,  
Assistant United States Attorney.

[Endorsed]: Filed Aug. 9, 1937. [43]

[Title of Court and Cause.]

ORDER.

It appearing to the undersigned trial judge that the appellant above named on the 9th day of August, 1937, filed with the Clerk of this Court a notice of appeal in the above entitled cause,

Now therefore, in pursuance of the Rules of Practice and Procedure in Criminal Cases adopted by the Supreme Court of the United States on May 7, 1934,

It is ordered that the above named appellant or his attorney, and the United States Attorney do appear before the undersigned judge on the 16th day of August, 1937, at ten o'clock A. M. at the City of Seattle, in the court room of said court, for such directions as may be appropriate with respect to the preparation of the record on appeal, including directions for the purpose of making promptly available all necessary transcripts of testimony and proceedings; and as to the time for the filing of an assignment of the errors of which the appellant complains if the record on appeal is to be without a bill of exceptions; as to the preparation and filing of the bill of exceptions and the settlement of the same by the undersigned trial judge, as to the contents of the transcript of record on said appeal and as to the time for the filing of said record with clerk's certificate in the United States Circuit Court of Appeals for the Ninth Circuit, and as to all other matters pertinent to said appeal.

It is further ordered that the clerk of this court do forthwith serve a certified copy of this notice by mail or personally on the appellant or his attorney and on the United States Attorney for this district.

Dated at Seattle, this 9th day of August 1, 1937.

JOHN C. BOWEN,

United States District Judge.

[Endorsed]: Filed Aug. 9, 1937. [44]

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[Title of Court and Cause.]

ORDER FIXING TIME FOR LODGING BILL  
OF EXCEPTIONS.

This matter coming before the Court upon the citation heretofore issued to the respective parties and their attorneys on the 9th day of August, 1937, and both parties being represented by their respective counsel, and the Court having considered the matter in the premises, and after hearing testimony upon the same and it being fully advised with reference to the facts by the respective counsel, it is hereby,

Ordered, adjudged and decreed that Leong Chong Wing shall have up to and including the 7th day of October, 1937 in which to procure to be settled and to file, the Bill of Exceptions, and also to file his Assignment of Errors in his appeal now pending before the United States Circuit Court of Appeals for the Ninth Circuit, and it is further



Ordered, adjudged and decreed that the term of court in which said cause was tried be and hereby is extended to and including the 7th day of October, 1937, for the purposes herein expressed.

Done in Open Court this 7th day of September, 1937.

JOHN C. BOWEN,  
Judge.

Presented by:

JOHN F. GARVIN,  
Attorney for Appellant.

O. K. as to form:

F. A. PELLEGRINI,  
Asst. U. S. Attorney.

[Endorsed]: Filed Sep. 7, 1937. [45]

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[Title of Court and Cause.]

PRAECIPE.

To the Clerk of the District Court of the United States for the Western District of Washington:

You are hereby requested to make a transcript of record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to an appeal taken in the above entitled cause, and to include in such transcript of record the following papers and proceedings. You may eliminate all captions, except in the indictment:

Indictment.

Arraignment and Plea.

Motion to Suppress (Journal Entry March 26, 1937).

Minute Entry of Order Dismissing Count II.

Affidavits of Leon Wing, Leong Chong Wing, Leon Chong Wing, and Lyle Gray, David Tow, Lonnie McIntosh, M. L. Hanks, M. W. Pevonak, G. W. Harlow, G. C. Polite, G. W. Harlow, G. C. Polite.

Verdict.

Motion for New Trial.

Order Denying New Trial.

Judgment and Sentence.

Notice of Appeal.

Assignments of Error.

Bond on Appeal.

Motion to Strike Hearsay from Affidavits.

Minute Entries of March 26, 1937.

Order Regarding Directions on Appeal.

Orders Fixing Time for Lodging Bill of Exceptions.

Certified Bill of Exceptions.

This Praecipe.

Clerk's Certificate.

Dated at Seattle, Washington, this 6th day of October, 1937.

JOHN F. GARVIN,  
Attorney for Defendant.

Received a copy of the within Praeceptum this 6th day of Oct., 1937.

J. CHARLES DENNIS,  
Attorney for U. S.

[Endorsed]: Filed Oct. 6, 1937. [46]

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[Title of Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT  
COURT TO TRANSCRIPT OF RECORD.

United States of America,  
Western District of Washington,  
Northern Division—ss:

I, Edgar M. Lakin, Clerk of the above entitled Court, do hereby certify that the foregoing type-written transcript of record, consisting of pages numbered from 1 to 46 inclusive, is a full, true and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause, as the same remain of record and on file in my office, as is required by praecipe of counsel filed and shown herein, with the exception of the Bill of Exceptions and Assignments of Error, the originals of which are transmitted with this transcript; and that the foregoing constitute the record on appeal herein from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court, at Seattle, in said District, this 25th day of October, 1937.

[Seal] EDGAR M. LAKIN,  
Clerk, United States District Court, Western Dis-  
trict of Washington.

By TRUMAN EGGER,  
Deputy. [47]

[Title of Court and Cause.]

## PROPOSED BILL OF EXCEPTIONS

Comes now the defendant above named and by his attorney submits the following proposed Bill of Exceptions herein.

Be it remembered that the above entitled cause came on for trial on the 5th day of August, 1937, before the Honorable John C. Bowen, in the above entitled court, sitting with the jury duly impaneled and sworn, plaintiff appearing by its attorney, Frank A. Pellegrini, Assistant United States Attorney, and the defendant appearing in person and by his attorney, John F. Garvin, whereupon the following testimony was offered and received, and the following proceedings were had:

The jury was duly impaneled and sworn, whereupon Mr. Pellegrini made the opening statement for the plaintiff herein. Defendant's attorney reserved his opening statement.



G. W. HARLOW,

called as a witness on behalf of plaintiff herein, upon being sworn, testified as follows (p. 4):

I have been in the Customs Service for nineteen years and am now an assistant customs agent located in [48] Seattle. I met the defendant, Leong Wing (p. 5) near his home early in January 1937. He was pointed out to me around his home. I tried to observe his movements and on January 29th with other Customs agents we followed him from his home at 3802 Dakota Street to Third and Lenora Streets, and saw him pick up Mr. Gray, his co-defendant. I know he was driving his own car, which is an Oldsmobile sedan. It was at the house all of the times I observed him. Gray got in the car and they drove around. The next time I saw Wing was on February 12th. I saw him at the corner of Dearborn Street and Rainier Avenue, and followed him to Third and Lenora, where Gray got in Wing's car. We surrounded the car, two Customs officers took Gray out of the car, while I and another officer took Wing out. We made a preliminary search there and we asked Mr. Wing to go to the Customs office, where we made a further search and found narcotics. (p. 6). Customs officers Coontz and Polite were in one car, Mr. Cozza and myself were in another car, and Mr. Pevonak. We searched Wing and Gray's persons at the Customs house garage but found nothing on them. Wing drove his car to the garage. I rode with him and Mr. McGrath and Mr. Cozza followed us in the

(Testimony of G. W. Harlow.)

Government car. (p. 7). We further searched the car and found a jar of opium.

“Q. Do you know what that jar contains?

Mr. Garvin: I object to that as incompetent and calling for a conclusion. And I object to it further on the ground that it controverts the fourth and fifth amendments of the Constitution of the United States and of the Espionage Act of 1917. [49]

The Court: This question can be answered by yes or no, and the objection to it as applied to this question is overruled.

Q. Do you know what the jar contains?

A. Yes.

Q. What does it contain?

Mr. Garvin: I object on the same ground.

The Court: Objection overruled.

Mr. Garvin: Exception.

Q. Do you know what is in it?

A. Yes.

Q. How much opium?

A. Possibly one ounce of opium.

Q. Where did you find that jar, plaintiff's exhibit one? (p. 8).

Mr. Garvin: May it be understood, if your Honor please, so that I do not have to repeat the objection, that the same objection runs to all of these questions and it is overruled and an exception allowed?

The Court: Yes, it may be so understood.”

I placed my name on the jar, exhibit one, and

(Testimony of G. W. Harlow.)

identify it by that means. We found it in a compartment in the panel part of the car. It was on top of the glove compartment. Mr. Cozza was present with me while the car was being searched. After we found exhibit one he said he did not have it for sale but that he was a smoker and had it for his own use.

“Mr. Pellegrini: I will now offer in evidence plaintiff’s exhibit one for identification.” (p 9).

[50]

Mr. Garvin: Same objection.

The Court: Same ruling.

(Plaintiff’s exhibit one admitted in evidence.)

### Cross Examination

Wing had been pointed out to me prior to January 29th. I saw his car in front of his house on several occasions. It was an Oldsmobile, and we checked up on the license number. That was one of the ways we identified it. (p. 10). We gave the car a preliminary search on Third and Lenora on the 12th of February but did not find exhibit one, until we got in the garage in the Federal Building. I first saw Wing at the corner of Rainier Avenue and Dearborn Streets on the 12th of February. He was driving his car and Customs officers were following it. I was assigned to go to Dearborn and Rainier at about twelve o’clock that day. (p. 11). Mr. Polite gave me my orders and we arrested Wing at about two o’clock in the afternoon. As soon as Gray got in the car we arrested them.

(Testimony of G. W. Harlow.)

Redirect Examination

Mr. Polite instructed me to follow Wing and make an arrest, if possible, on January 29th. (P. 12).

(Witness excused.)

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ANTHONY COZZA,

called as a witness on behalf of plaintiff herein, upon being sworn, testified as follows:

I am a Captain of the Customs Patrol, residing in Seattle, and have been in the Customs Service for twenty-five years. About one o'clock I saw Wing driving his Oldsmobile sedan, Washington license No. A-95590, at the corner of Dearborn Street and Rainier Avenue. We followed him across Dearborn [51] Street on Fourth Avenue, where he turned on Washington Street. We parked some distance away and observed the car. About 1:50 P. M. Wing got in his car, where he drove to Third and Lenora (P. 14), where Gray got in the car. The three Government cars blocked Wing's car and the officers got out and took the defendants out of the car. Officers rode with Wing to the Federal Office Building garage, where the car was thoroughly searched. (P. 15).

"Q. What did you find in the car, if anything?  
Mr. Garvin: I object.



(Testimony of Anthony Cozza.)

The Court: Same ruling."

We found exhibit one, which contains approximately one ounce of smoking opium. He said it was for his own use and was not for sale. He said he was a smoker. I was acting under instructions from Agent Polite.

Recross Examination.

I received instructions about noon (P. 16) and I saw Wing's car between twelve and 1:00 P. M. We arrested Wing about 2:20 in the afternoon. He went in 1303 Washington Street around one o'clock and came out at approximately 1:50 P. M.

(Witness excused).

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G. C. POLITE

called as a witness on behalf of plaintiff herein, upon being sworn, testified as follows:

I am a Customs agent residing in Seattle and have been in the Customs Service since 1930, being in charge of narcotic smuggling under the Supervising Customs Agent and have been since 1931. I have known of Wing since 1931 and have seen him at various times although I never knew him personally, having received information from various sources as to his [52] activities from brother officers and other sources. He was pointed out to me in 1932 as Wing and I have seen him in 1933, 1935, and 1936. (P. 18). I have seen him from time to time in

(Testimony of G. C. Polite.)

Chinatown and have known who he is since 1931. I have known the defendant Gray since February, 1937. I saw Wing two times in January, 1937 on the 20th and 29th. I received some information and went in the vicinity of Wing's home and observed his car parked in front of his house. He entered the car and seemed to be working inside the compartment of the car (P. 19) and in about fifteen or twenty minutes he re-entered the car and drove away. I followed him to Chinatown and did not see him again that day. I received information at 5:30 or six o'clock on January 20th that he was to deliver narcotics to a white man. I believe that my informant was reliable as he had given me reliable information before. (P. 20). On January 29th I parked my car about a block from Wing's residence where we observed his car back out of the garage and proceed in the direction of the business district. After following the car two or three miles I lost the trail. Customs Officers Harlow, McGrath, Pevonak and Coontz were working with me under my instructions. I told them I had information about Wing. I saw Wing and Gray on February 4th. Officer Coontz and I saw Wing proceeding at the corner of Dearborn Street and Rainier Avenue. They were followed by another Government car in which were Officers McGrath and Pevonak. After Wing's car passed ours we took up the trail to 13th and Washington where we lost the trail. On February 12th I was at Dearborn and Rainier Avenue with

(Testimony of G. C. Polite.)

Officer Coontz and saw the defendant's car proceed on Rainier Avenue, followed by the Government car [53] that Officers McGrath and Pevonak were in. We followed the Government car, which followed Wing to an apartment house between Twelfth and Fourteenth Avenues on Washington Street. We saw him enter and leave the apartment house and drive toward the business district. At Third and Lenora the car stopped and Gray stepped in the car. According to a prearranged plan, we blocked the car with our Government cars and I removed Gray and told him to get out of the car. We made a cursory search and took them to the Federal Building, where Gray admitted he was an opium smoker. I was in charge of the investigation. (P. 23). I observed Wing and Gray on January 29th, February 4th and February 12th, 1937, because I had received information that Wing was to deliver narcotics to a white man. I did not know the white man's name or where they were to be delivered, but that Wing was to deliver them in his car. I knew the kind of car he had. I had known the informant for a period of a year and considered him reliable. (P. 24).

#### Cross Examination

On February 12th at about noon I received information from an informer that Wing was going to make a delivery of narcotics on that day. Accordingly, we had three Government automobiles follow Wing, two men in each car. On February 12th I did not actually see him commit any crime, and ar-

(Testimony of G. C. Polite.)

rested him on suspicion, finding Exhibit No. 1 bore out the information that I had received that he would deliver narcotics. Relative to my affidavit on file in this cause, the information that I have stated therein I received from Mr. Hanks but the actual seizure was due to the information that I obtained from the informer on noon of the day of the seizure, to-wit, on February 12th.

(Witness excused).

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### HUGO RINGSTROM,

called as a witness on behalf of plaintiff herein, upon being sworn, testified as follows: [54]

I am a Government chemist and have examined Government's exhibit one which contains approximately one ounce of smoking opium.

### Cross Examined

(Adopted as a witness by the defendant).

I cannot tell whether exhibit one was prepared from gum opium lawfully imported in the United States or not. (P. 36).

(Witness Excused).



MILO W. PEVONAK,

called as a witness on behalf of plaintiff herein, upon being sworn, testified as follows:

I am and for seven years have been a Customs guard stationed in Seattle.

Mr. Garvin: I will admit his testimony will be substantially the same as the other officers. (P. 41).

In a conversation with Gray at the Federal Building he told me he was a smoker; that he knew nothing about the opium in the car and that it did not belong to him.

(Witness Excused).

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MARVIN HANKS,

called as a witness on behalf of plaintiff herein, upon being sworn, testified as follows:

I have had charge of narcotic smuggling investigation for the past twelve years on the Pacific Coast. Wing was pointed out to me in 1926. I again saw him in 1931 as a man who had been convicted of violating the narcotic laws. (P. 44). I communicated all my information about Wing to Agent Polite. I told him that Chin Wah, a narcotic dealer, [55] had spoken to me of Wing and of statements a Chinese opium dealer in Chicago told me of Wing. I introduced Mr. Polite to my informers. I had known the informer in this case personally since 1932. He had given me information upon which I acted and made a narcotic seizure. I made a seizure

(Testimony of Marvin Hanks.)

in Aberdeen, Washington, in October, 1934 based upon information the informer gave me and in the Chin Wah case where I was working under cover he confirmed information that I had. (P. 47).

### Cross Examination

In the Chin Wah case the informer in this case told me where the speed boat was kept and also its number. Narcotic Officer Morris pointed Wing out to me and said that he dropped through a skylight to arrest him for violating the narcotic laws. Morris told me that Wing was in a hop joint with several other Chinese when it was raided. He said he believed that Wing was interested in an opium smuggling joint. I was really close to the Chin Wah gang but never met Wing with them nor did I ever see him talk to Chin Wah. (P. 49). There might or might not be some significance to seeing a narcotic dealer talking to a gambler of itself, but we are always suspicious. It might or might not mean something when a narcotic dealer talks to another Chinese on the street. (P. 51).

(Witness Excused).

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### RUSSELL HIATT,

a witness called on behalf of plaintiff herein, upon being duly sworn, testified as follows:

I took a statement made by Wing at the Federal Building. He said he had known Gray for a long

(Testimony of Russell Hiatt.)

time; that he did not [56] know he was an opium smoker and was not going to deliver opium to him, but that he was going to smoke it himself; that he had never met Gray in the same section of town before; that he purchased the opium a few days before; that he paid \$10.00 for it. (p. 53).

The Government rests.

Mr. Garvin: Comes now the defendant Wing, and moves the court to instruct the jury and direct the jury to return a verdict of not guilty, for the reason that there is no substantial evidence bearing out the charges of the indictment herein; and upon the further ground that it appears affirmatively from the testimony that Exhibit 1, the narcotics in question, was seized in contravention of his rights under the Constitution and laws of the United States; and third, that there is no substantial evidence that the narcotics in question were ever imported into the United States in violation of law.

The Court: The motion is denied and an exception allowed.

The defendant makes an opening statement to the jury.

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LYLE G. GRAY,

one of the defendants, after being duly sworn, testified as follows:

I have known Wing seven or eight years and worked for him at the Jockey Club, which was a beer parlor and restaurant, as a bartender. I have been

(Testimony of Lyle G. Gray.)

convicted of violating the liquor and narcotic laws. Wing said he could get a charter for a club in Yakima or Aberdeen and wanted me to investigate and manage the place if it was opened. I decided [57] Yakima was the best town and we conferred at different times about the club. I saw Wing six or seven times in that connection. I met him by appointment on the 12th of February and after I started to get in the car officers arrested and searched me. The first time I saw exhibit one was in the Customs office. I did not know it was in the car and had no interest in it. (p. 58). I had worked for Wing.

#### Cross Examination

I do not know where Wing lives or that he is part owner in the Hankow Cafe. I lived on First Avenue between Pike and Pine. We talked this business over for a period of three months. I do not remember whether I met him on January 29th or not. I met him twice at Third and Lenora and once at Second and Virginia by accident. (p. 60). I have not been smoking opium for seven years. (p. 61).

(Excused).

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#### LEONG CHONG WING,

one of the defendants, after being duly sworn, testified as follows:

I was born in Oregon and was convicted six years ago in Federal Court in a narcotic case. I have



(Testimony of Leong Chong Wing.)

been in the lottery and restaurant business. I knew Chin Wah for a long time but had no dealings with him. I just knew him because he was Chinese. I was a partner of Tommy Wong's in the Jockey Club but did not deal with Chin Wah or Tommy Wong in narcotics. I have known Gray for seven or eight years. I bought drinks in his place and he worked for me at the Jockey Club. It was a chop suey house, beer parlor, and dance hall. I met Gray on the 29th of [58] January, the 4th and 12th of February, and we talked about opening up a club out of town. He advised me that Yakima was a better town and I made trips over to look around. I smoked opium for many years and suffered from a rectal trouble that I have since been operated on for. I smoked to kill the pain. I had this sickness for ten years. I don't use narcotics any longer, and live with my family, consisting of a wife and two children, on Dakota Street. My wife would not permit me to smoke opium at home (p. 66), so I was coming to an apartment on Washington Street to smoke. I could not get in. I was not going to sell narcotics to Gray.

### Cross Examination

I bought the narcotics from Chin Lee, who was going to China. (p. 67). I paid \$10.00 for a big can.

Q. As a matter of fact, you are an opium importer, aren't you, and bring it in and sell it, don't you? You had brought it in to sell it, hadn't you?



(Testimony of Leong Chong Wing.)

Mr. Garvin: I object. I think the question is improper.

The Court: Objection sustained.

Mr. Pellegrini: I will withdraw the question.

Q. You know Chin Wah?

A. Yes.

Q. He used to be in partners with you, didn't he?

A. No.

Q. If Mr. Hanks said he was in partners with you he was wrong, was he?

Mr. Garvin: Mr. Hanks never said any such a thing. [59]

Q. If Mr. Hanks were to testify that you and Chin Wah used to be partners he would not be telling the truth, is that it?

Mr. Garvin: I assign counsel's question as misconduct.

The Court: I think that is not a proper question. Objection sustained.

Mr. Pellegrini: I can put Mr. Hanks on the stand.

Mr. Garvin: I object as further misconduct—counsel's statement of what he could do.

The Court: Objection sustained, and the jury will disregard it.

Q. Were you convicted in 1931 of a violation of the narcotic importing and exporting act? Answer yes or no. Isn't that the charge?

(Testimony of Leong Chong Wing.)

Mr. Garvin: Produce the charge and I will tell you whether he was or not.

Q. Were you convicted of violating the narcotics importing and exporting act in 1931?

Mr. Garvin: I object as calling for a conclusion on a question of law.

Q. If you know, I said.

The Court: He may answer if he knows.

Q. Do you know?

A. No.

The defendant rests. (p. 69).

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Mr. Pellegrini: At this time, if the Court please, I request permission to get the original file of the conviction [60] of the defendant Leong Wing showing what crime he was convicted of, in rebuttal.

Mr. Garvin: I object to that as incompetent. The purpose of a record of conviction is to affect the credibility of a witness. The defendant has testified fully relative to it. If he has not testified correctly it is for the purpose of impeachment. I have no objection to it going in for that purpose. I ask counsel directly if he intends to use it for the purpose of impeachment, and if he does not so intend I desire to assign counsel's offer as misconduct.

Mr. Pellegrini: I offer it for the purpose of impeachment of the witness when he says it was for smoking and nothing else.

Mr. Garvin: There is no such offense as smoking. The man comes into this court charged under either the Jones or Harrison Act—I ask for a mistrial based on counsel's last statement. You cannot impeach a man in the face of this record.

The Court: The objection is sustained. The statement of counsel may be stricken and the jury instructed to disregard it. The application for a mistrial is denied, and an exception allowed. Is there any rebuttal testimony?

Mr. Pellegrini: No rebuttal testimony.

(The jury thereupon temporarily retired).

Mr. Garvin: May it please the court, both the plaintiff and defendant having rested, the defendants and each of them renew the motions heretofore made.

The Court: The motion for an instructed verdict as to the defendant Gray is granted. The motion is denied as to the other defendant. Exception allowed. [61]

(Argument of counsel followed).

The Court properly instructed the jury but did not submit to them the question of the legality of the search, the Court passing upon that question as a matter of law. [62]

[Title of Court and Cause.]

(Excerpt from Journal Entry.)

ORDER OVERRULING DEMURRER AND  
DENYING MOTIONS TO ELECT, QUASH,  
SUPPRESS, STRIKE, TO MAKE MORE  
DEFINITE AND CERTAIN.

Now on this 26th day of March, 1937, F. A. Pelligrini, Assistant United States District Attorney, appearing for the plaintiff, and John F. Garvin, Esq., appearing for the defendant, this cause comes on for hearing on demurrer to indictment, motion to quash indictment, motion to suppress evidence; motion to elect; motion to make Count II of the indictment more definite and certain; oral motion to strike conclusions of law in plaintiff's controverting affidavits on motion to suppress.

Arguments of counsel were heard on the demurrer and each and all of said motions. The demurrer is overruled and each and every of the motions is denied, and exceptions allowed defendant to each and every of said ruling of the Court. [63]



[Title of Court and Cause.]

AFFIDAVIT.

United States of America,  
Western District of Washington,  
Northern Division—ss.

Leong Chong Wing, being first duly sworn, upon his oath deposes and says:

That on the 12th day of February, 1937 when officers and agents of the United States government searched his automobile he absolutely did not consent to said search, nor invite said officers to search his automobile.

That affiant specifically denies that G. C. Polite, assistant customs agent, could have received reliable information that affiant was to meet a white man for the purpose of making a delivery of narcotic drugs for the reason that affiant was not going to, and never had any intention of meeting a white man for the purpose of making a delivery of narcotic drugs on the above named date or at any other time.

That in the year of 1931 affiant was arrested for being in a place where opium was smoked and was convicted in this court for said offense and received a sentence of five months, and affiant specifically denies that he has ever been convicted of being a dealer in narcotic drugs; that affiant has smoked opium but has never sold or dealt in narcotic drugs.



Further affiant sayeth not.

LEONG CHONG WING.

Subscribed and sworn to before me this 26th day of March, 1937.

WARREN HARDY,

Notary Public in and for the State of Washington,  
residing at Seattle. [65]

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[Title of Court and Cause.]

AFFIDAVIT.

United States of America,  
Western District of Washington,  
Northern Division—ss.

Leong Chong Wing, being first duly sworn, upon his oath deposes and says: That on the 12th day of February, 1937 at the hour of about two o'clock p. m. he was riding in his automobile. That certain agents and officers of the United States, without any warrant for his arrest or warrant to search his car, arrested affiant and searched his car; that your affiant had committed no crime in the presence of said officers and that they had no reasonable ground to suspect that affiant had committed a felony; that affiant was not guilty of any breach of the public peace; that said officers searched your affiant's car and took therefrom a certain quantity of narcotic drugs; that your affiant has grounds to believe and does believe that said narcotics will be used against him in the trial of said cause; that there was no

legal authority whatsoever for said search. Further affiant sayeth not.

LEONG CHONG WING.

Subscribed and sworn to before me this 10th day of March, 1937.

WARREN HARDY,  
Notary Public in and for the State of Washington,  
residing at Seattle. [66]

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[Title of Court and Cause.]

AFFIDAVIT.

United States of America,  
Western District of Washington,  
Northern Division—ss.

G. W. Harlow, being first duly sworn on oath deposes and says:

That he is an assistant Customs Agent, Bureau of Customs, Treasury Department of the United States, and as such makes this affidavit for and on behalf of the plaintiff herein.

That your affiant has known the defendant Leong Chong Wing since on or about January 1, 1937. That on or about January 1, 1937 your affiant was advised by his superior officers and by other officers in the Customs Service, to-wit, M. L. Hanks, Customs Agent, and G. C. Polite, Assistant Customs Agent, that the said defendant had theretofore been convicted of a violation of the narcotic laws of

the United States and that the said defendant had recently received a large shipment of opium and other narcotic drugs and was engaged in the illicit sale of the said narcotic drugs, and your affiant was ordered by his superior officers to observe the said defendant. [67]

That on or about January 29, 1937 your affiant was advised by his said superior officers that the said defendant Leong Chong Wing would meet a white man for the purpose of effecting an illegal sale of narcotics and that said defendant would be transporting narcotics in his automobile. That on said date your affiant observed the said defendant leave his home at 3802 Dakota Street, in the City of Seattle, Washington, driving an Oldsmobile sedan owned by the said defendant. That your affiant followed the said defendant from his said home to the corner of Third Avenue and Lenora Street, in the city of Seattle, Washington, at which point your affiant observed a white man get into the automobile of the said defendant Leong Chong Wing, the said white man being later identified as the co-defendant herein, Lyle G. Gray. That the said defendant, Leong Chong Wing, accompanied by the said Lyle G. Gray, thereupon proceeded in a northerly direction along Third Avenue and south on Fourth Avenue to Virginia Street at which point your affiant departed after carefully scrutinizing the defendant Leong Chong Wing and the said Lyle G. Gray so that he could identify them in the future.

That on or about February 12, 1937 your affiant was advised by his said superior officers and by G. C. Polite, Assistant Customs Agent, that the said defendant Leong Chong Wing would meet a white man to effect a delivery of narcotic drugs and that the said defendant would transport said drugs in his said automobile. That on the said date your affiant, in company with G. C. Polite, Assistant Customs Agent, A. H. Koons, Captain of the Customs Guards, [68] A. Cozza, Chief Patrol Inspector, United States Customs Service, F. N. McGrath, Customs Patrol Inspector, and M. W. Pevonak, Customs Guard, observed the said defendant Leong Chong Wing meet Lyle G. Gray, co-defendant in the above entitled action, on the corner of Third Avenue and Lenora Street, in the City of Seattle, Washington, the said defendant Leong Chong Wing arriving at the said point in an automobile. That upon the arrival of the said defendant Leong Chong Wing, the said Lyle G. Gray entered the said automobile of the defendant Leong Chong Wing and closed the door. That your affiant and the said officers thereupon placed the said Leong Chong Wing and Lyle G. Gray under arrest and thereupon proceeded to search the said automobile for opium and/or other narcotic drugs, and found secreted in said defendant's automobile, in back of the instrument panel on top of the glove compartment, a glass jar containing one ounce of opium prepared for smoking, which said merchandise had been theretofore imported into the United States contrary to law. That your affiant had reasonable cause



to believe and did believe that the defendant Leong Chong Wing was engaged in the commission of a felony at the time the said Leong Chong Wing was arrested.

G. W. HARLOW

Subscribed and sworn to before me this 20 day of March, 1937.

TRUMAN EGGER

Deputy Clerk, U. S. District Court  
Western District of Washington.

[69]

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[Title of Court and Cause.]

AFFIDAVIT.

United States of America,  
Western District of Washington,  
Northern Division—ss.

M. W. Pevonak, being first duly sworn on oath deposes and says:

That he is a Customs Guard, Bureau of Customs, Treasury Department of the United States, and as such makes this affidavit for and on behalf of the plaintiff herein.

That your affiant has known the defendant Leong Chong Wing since on or about December 15, 1936. That your affiant was advised on or about said date by his superior officers in the Customs Service, and more particularly by G. C. Polite, Assistant Customs Agent, that the said defendant Leong Chong



Wing was a known, previously convicted dealer in narcotics and that information had been received by the said officers that the said defendant Leong Chong Wing had recently received a shipment of opium prepared for smoking and other narcotic drugs which said shipment had been illegally imported into the United States and that the said defendant was engaged in the illicit sale of the said narcotic drugs. That your affiant was thereupon ordered to keep the said defendant Leong Chong Wing under observation and that your affiant from on or about December 15, [70] 1936 to February 12, 1937, on numerous occasions, observed the said defendant in and about the vicinity of the district known as "Chinatown" in the city of Seattle, Washington.

That on or about February 4, 1937 your affiant was advised by G. C. Polite, Assistant Customs Agent, one of his superior officers, that the said defendant Leong Chong Wing would meet a white man for the purpose of effecting an illicit sale and delivery of narcotics and that the said defendant would be transporting the said narcotics in his automobile. That on said date your affiant, accompanied by F. N. McGrath, Customs Patrol Inspector, observed the said defendant Leong Chong Wing leave his home at 3802 Dakota Street, Seattle, Washington, driving an Oldsmobile sedan. That they followed the said defendant from his said home to the vicinity of Second Avenue and Virginue Street in the city of Seattle, Washington. That at the said point the

said defendant Leong Chong Wing stopped his automobile and met a white man who was later and on or about February 12, 1937, identified as Lyle G. Gray. That at the said time the said Lyle G. Gray entered the said automobile and the defendant Leong Chong Wing thereupon proceeded to drive the said automobile to the vicinity of Third Avenue and Stewart Street in the said city of Seattle. That the said Lyle G. Gray thereupon alighted from the said automobile and the said defendant Leong Chong Wing proceeded to drive his automobile to the "Chinatown" district in the city of Seattle.

That on or about February 12, 1937 your affiant was advised by his said superior officers in the Customs [71] Service that the said defendant Leong Chong Wing would meet a white man to effect a delivery of narcotic drugs and that the said defendant would transport said drugs in his said automobile. That on the said date your affiant, in company with G. C. Polite, Assistant Customs Agent, G. W. Harlow, Assistant Customs Agent, A. H. Koons, Captain of the Customs Guards, A. Cozza, Chief Patrol Inspector, United States Customs Service, and F. N. McGrath, Customs Patrol Inspector, observed the said defendant Leong Chong Wing meet Lyle G. Gray, co-defendant in the above entitled action, on the corner of Third Avenue and Lenora Street, in the city of Seattle, Washington, the said defendant Leong Chong Wing arriving at the said point in an automobile. That upon arrival of the said defendant Leong Chong Wing, the said

Lyle G. Gray entered the said automobile of the defendant Leong Chong Wing and closed the door. That your affiant and the said officers thereupon placed the said Leong Chong Wing and Lyle G. Gray under arrest and thereupon proceeded to search the said automobile for opium and/or other narcotic drugs, and found secreted in said defendant's automobile, in back of the instrument panel on top of the glove department, a glass jar containing one ounce of opium prepared for smoking, which said merchandise had been theretofore imported into the United States contrary to law. That your affiant had reasonable cause to believe and did believe that the defendant Leong Chong Wing was engaged in the commission of a felony at the time the said Leong Chong Wing was arrested.

M. W. PEVONAK.

Subscribed and sworn to before me this 20th day of March, 1937.

TRUMAN EGGER,  
Deputy Clerk, U. S. District Court, Western District of Washington. [72]

[Title of Court and Cause.]

AFFIDAVIT.

United States of America,  
Western District of Washington,  
Northern Division—ss.

M. L. Hanks, being first duly sworn on oath deposes and says:

That he is a Customs Agent, Bureau of Customs, Treasury Department of the United States, and as such makes this affidavit for and on behalf of the plaintiff herein.

That your affiant has known the defendant Leong Chong Wing, alias Lew Ching Wing, alias Yue Sing, alias Yoe Sing, alias Yoe Sing Wing, alias Leon Wing, for a period of approximately eleven years. That during all the said times your affiant has known the said defendant Leong Chong Wing, the said defendant has had the reputation of being an illicit dealer in opium and other narcotic drugs. That your affiant has had reliable information during all the said time that the said defendant has associated with persons known to be illicit dealers in opium and other narcotics, more particularly that the said defendant associated with one Chin Wah who was heretofore and on or about May 13, 1935 convicted in the above entitled Court on a plea of guilty in causes number 43576 and 43578.

That on or about December 15, 1936 your affiant received reliable information that the defendant Leong [73] Chong Wing had received a shipment of



opium, morphine and other narcotic drugs and that the said defendant was engaged in the illicit sale of the said opium, morphine and other narcotic drugs in the city of Seattle, Washington, and within the Customs Collection District of the Western District of Washington.

(signed) MELVIN L. HANKS.

Subscribed and sworn to before me this 22nd day of March, 1937.

(signed) S. COOK,  
Deputy Clerk, U. S. District Court, Western District of Washington. [74]

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[Title of Court and Cause.]

AFFIDAVIT.

United States of America,  
Western District of Washington,  
Northern Division—ss.

G. C. Polite, being first duly sworn, on oath deposes and says:

That he is an assistant Customs agent, Bureau of Customs, Treasury Department of the United States, and as such makes this affidavit for and on behalf of the plaintiff herein.

That on or about the 19th day of March, 1937, your affiant herein made and executed an affidavit on the motion to suppress heretofore filed herein, wherein your affiant stated that on or about January 29th, February 4th and February 12th, 1937, your



affiant received reliable information that the defendant Leong Chong Wing was to meet a white man for the purpose of making a delivery of narcotic drugs, and that the defendant was transporting opium and other narcotic drugs in his automobile. That your affiant has heretofore received from the said informant, whose name your affiant does not feel at liberty to disclose, reliable information, and that upon many occasions your affiant acted upon the said information and found that the information given to him by the informant was accurate.

[75]

Further affiant sayeth not.

G. C. POLITE.

Subscribed and sworn to before me this 22nd day of March, 1937.

TRUMAN EGGER,

Deputy Clerk, U. S. District Court, Western District of Washington. [76]

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[Title of Court and Cause.]

AFFIDAVIT.

United States of America,  
Western District of Washington,  
Northern Division—ss.

G. W. Harlow, being first duly sworn, on oath deposes and says:

That he is an assistant Customs Agent, Bureau of Customs, Treasury Department of the United States, and as such makes this affidavit for and on

behalf of the plaintiff herein, and for the purpose of supplementing affidavit heretofore filed in the above entitled cause.

That he was present at the searching of the automobile of the defendant, Leong Chong Wing, on or about February 12, 1927; that the said Leong Chong Wing did not object to a search being made of said automobile; that after finding opium in the said defendant's automobile, the defendant Leong Chong Wing admitted that the said opium belonged to him, but stated that it was for his own personal use.

Further affiant sayeth not.

G. W. HARLOW.

Subscribed and sworn to before me this 22nd day of March, 1937.

TRUMAN EGGER,  
Deputy Clerk, U. S. District Court, Western District of Washington. [77]

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[Title of Court and Cause.]

AFFIDAVIT.

United States of America  
Western District of Washington  
Northern Division.—ss.

Lonnie McIntosh, being first duly sworn on oath deposes and says:

That he is a Narcotic Agent of the Bureau of Narcotics, Treasury Department of the United States, and as such makes this affidavit for and on behalf of the plaintiff herein.

That he is acquainted with the defendant Leong Chong Wing, alias Lew Ching Wing, alias Yue Sing, alias Yoe Sing, alias Yoe Sing Wing, alias Leon Wing, having known the said defendant for approximately three years. That heretofore and on or about March 23, 1931, in cause number 41286 in the above entitled Court, the said defendant Leong Chong Wing was convicted and sentenced for violation of the Narcotic Drugs Import and Export Act upon a plea of guilty.

That during all the times your affiant has known the said defendant Leong Chong Wing, the said defendant has had the reputation of being a dealer in narcotic drugs and your affiant has on numerous occasions received complaints of the activities of the defendant Leong Chong Wing in the sale of narcotic drugs. [78]

That on or about December 15, 1936 your affiant received reliable information that the said defendant Leong Chong Wing has received a quantity of smoking opium and morphine and that the said defendant was selling the said opium and morphine in the city of Seattle, Washington.

That your affiant has on numerous occasions seen the defendant Leong Chong Wing in the company of and associating with other persons who have heretofore been convicted of the illicit sale of narcotics and are known to your affiant to be engaged in the illicit sale of opium and other narcotics. More particularly has your affiant observed the defendant Leong Chong Wing in company with one Tommy Wong, a known narcotic dealer, the said Tommy Wong having heretofore and on, or about January 30,

1933, in cause number 42043 in the above entitled Court, been convicted and sentenced for violation of the Harrison Narcotic Act.

LONNIE McINTOSH

Subscribed and sworn to before me this 20 day of March, 1937.

TRUMAN EGGER

Deputy Clerk, U. S. District Court, Western District of Washington. [79]

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[Title of Court and Cause.]

AFFIDAVIT.

United States of America  
Western District of Washington  
Northern Division.—ss.

David Tow, being first duly sworn on oath deposes and says:

That he is a Narcotic Agent of the Bureau of Narcotics, Treasury Department of the United States, and as such makes this affidavit for and on behalf of the plaintiff herein.

That he is acquainted with the defendant Leong Chong Wing, alias Lew Ching Wing, alias Yue Sing, alias Yoe Sing, alias Yoe Sing Wing, alias Leon Wing, having known the said defendant for approximately six years. That heretofore and on or about March 23, 1931, in cause number 41286 in the above entitled Court, the said defendant Leong Chong Wing was convicted and sentenced for violation of the Narcotic Drugs Import and Export Act upon a plea of guilty.



That during all the times your affiant has known the said defendant Leong Chong Wing, the said defendant has had the reputation of being a dealer in narcotic drugs and your affiant has on numerous occasions received complaints of the activities of the defendant Leong Chong Wing in the sale of narcotic drugs. [80]

That on or about December 15, 1936 your affiant received reliable information that the said defendant Leong Chong Wing had received a quantity of smoking opium and morphine and that the said defendant was selling the said opium and morphine in the city of Seattle, Washington.

That your affiant has on numerous occasions seen the defendant Leong Chong Wing in the company of and associating with other persons who have heretofore been convicted of the illicit sale of narcotics and are known to your affiant to be engaged in the illicit sale of opium and other narcotics. More particularly has your affiant observed that defendant Leong Chong Wing in company with one Tommy Wong, a known narcotic dealer, the said Tommy Wong have heretofore and on or about January 30, 1933, in cause number 42043 in the above entitled Court, been convicted and sentenced for violation of the Harrison Narcotic Act.

DAVID F. TOW

Subscribed and sworn to before me this 20 day of March, 1937.

TRUMAN EGGER

Deputy Clerk, U. S. District Court, Western District of Washington. [80a]

[Title of Court and Cause.]

AFFIDAVIT.

United States of America  
Western District of Washington  
Northern Division.—ss.

G. C. Polite, being first duly sworn on oath deposes and says:

That he is an Assistant Customs Agent, Bureau of Customs, Treasury Department of the United States, and as such makes this affidavit for and on behalf of the plaintiff herein.

That your affiant has known the defendant Leong Chong Wing, alias Lew Ching Wing, alias Yue Sing, alias Yoe Sing, alias Yoe Sing Wing, alias Leon Wing, ever since 1931.

That on or about March 23, 1931 the said defendant Leong Chong Wing, upon a plea of guilty, was convicted and sentenced by the above entitled Court in cause number 41286. That during all the time your affiant has known said defendant Leong Chong Wing, said defendant has had the reputation of being an illicit dealer in opium and other narcotic drugs.

That prior to January 29, 1937 your affiant received information from his superior officer in the Customs Service, to wit, M. L. Hanks, Customs Agent, and from Lonnie McIntosh and David Tow, Narcotic Agents of the Bureau [81] of Narcotics, Treasury Department of the United States, that the said defendant Leong Chong Wing had received

a shipment of opium prepared for smoking and other narcotic drugs and that the said defendant was engaged in the illicit sale of said narcotics.

That on or about January 29, 1937 your affiant received reliable information that the said defendant Leong Chong Wing was to meet a white man for the purpose of effecting a delivery of narcotic drugs and that said defendant was transporting opium and other narcotic drugs in his automobile. That on or about January 29, 1937 your affiant received definite and reliable information that during the afternoon of the said day the defendant Leong Chong Wing did meet a white man to effect a delivery of opium and/or other narcotic drugs.

That on or about February 4, 1937 your affiant received reliable information that the said defendant Leong Chong Wing was to meet a white man for the purpose of effecting a delivery of narcotic drugs and that said defendant was transporting opium and other narcotic drugs in his automobile. That on or about February 4, 1937 your affiant received definite and reliable information that during the afternoon of the said day the defendant Leong Chong Wing did meet a white man to effect a delivery of opium and/or other narcotic drugs.

That on or about February 12, 1937 your affiant received definite and reliable information that the said defendant Leong Chong Wing would meet a white man to effect the delivery of narcotic drugs and that said defendant would transport said drugs in his automobile. That on the said date your affiant,



in company with G. W. Harlow, Assistant [82] Customs Agent, A. H. Koons, Captain of the Customs Guards, A. Cozza, Chief Patrol Inspector, United States Customs Service, F. N. McGrath, Customs Patrol Inspector, and M. W. Pevonak, Customs Guard, observed the said defendant Leong Chong Wong meet Lyle G. Gray, co-defendant in the above entitled action, on the corner of Third Avenue and Lenora Street, in the city of Seattle, Washington, the said defendant Leong Chong Wing arriving at the said point in an automobile. That upon the arrival of the said defendant, the said Lyle G. Gray entered the said automobile of the defendant Leong Chong Wing and closed the door.

That your affiant and the said officers thereupon placed the said Leong Chong Wing and Lyle G. Gray under arrest and thereupon proceeded to search the said automobile for opium and/or other narcotic drugs, and found secreted in said defendant's automobile, in back of the instrument panel on top of the glove compartment, a glass jar containing one ounce of opium prepared for smoking, which said merchandise had been theretofore imported into the United States contrary to law. That prior to the arrest of the said defendants on February 12, 1937 your affiant had been informed by officers of the Customs Service that on January 29, 1937 and February 4, 1937 the said defendant Leong Chong Wing was observed on the said occasions to pick up the defendant Lyle G. Gray in the vicinity of Third Avenue and Lenora Street and Second



Avenue and Virginia Street in the city of Seattle, Washington. That your affiant had reasonable cause to believe, and did believe, that the defendant [83] Leong Chong Wing was engaged in the commission of a felony at the time the said Leong Chong Wing was arrested.

G. C. POLITE

Subscribed and sworn to before me this 20th day of March, 1937.

TRUMAN EGGER,  
Deputy Clerk, U. S. District Court, Western District of Washington. [84]

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[Title of Court and Cause.]

MOTION TO STRIKE.

Comes now the defendant and moves the Court to strike all hearsay portions of the affidavits of Federal customs agents and narcotic agents filed herein controverting the motion and affidavits to suppress.

JOHN F. GARVIN

Attorney for Defendants. [85]

[Title of Court and Cause.]

AFFIDAVIT.

United States of America  
Western District of Washington  
Northern Division—ss.

Leong Wing, being first duly sworn, upon his oath deposes and says:

That he is one of the defendants herein, that any information received by M. W. Pevonak, G. W. Harlow, G. C. Polite, David Tow, M. L. Hanks, Lonnie McIntosh, or any other officers or agents of the United States Government that affiant had received a quantity of smoking opium and morphine on the 15th day of December, 1936, or prior thereto, was absolutely unreliable and false; that the smoking opium found by the unlawful search of affiant's car was not acquired by affiant until the latter part of January, 1937.

That your affiant did not meet Lyle G. Gray, or any other persons, on the 29th day of January, 4th day of February, 12th day of February, all in the year of 1937, or at any other time, for the purpose of selling, delivering, or otherwise transacting any negotiations with reference to any narcotic drugs, that affiant has never discussed opium or any other narcotic with the said Lyle G. Gray.

That affiant is acquainted with one Tommy Wong and one Chin Wah, as he is naturally acquainted with practically every Chinese person residing in Seattle, [86] Washington; that he has never been informed that the said Tommy Wong or Chin Wah were re-

puted to be dealers in narcotics, that he has not associated with them any more frequently than he has associated with the rest of the people of his race in the city of Seattle; that your affiant specifically denies that he has on numerous occasions associated with persons convicted of the illicit sale of narcotics or engaged in the illicit sale of narcotics.

That on the 12th day of February, 1937 in the vicinity of 3rd ave. and Lenora Street in Seattle, Washington, he met the co-defendant, Lyle G. Gray, that said Lyle G. Gray approached affiant's car, opened the door and had partially seated himself but had not yet closed the car door when officers and agents of the United States Government seized the said Lyle G. Gray, jerked him out of the automobile and escorted him down the street; thereupon officers and agents of the United States Government searched affiant's automobile and found a small quantity of smoking opium and then placed your affiant under arrest; that neither your affiant or the said Lyle G. Gray had committed any misdemeanor in the presence of said officers, nor had they committed any act which would give said officers probable cause to believe either your affiant or the said Lyle G. Gray had committed a felony.

LEONG WING

Subscribed and sworn to before me this 23 day of March, 1937.

WARREN HARDY,

Notary Public in and for the State of Washington,  
residing at Seattle. [87]

[Title of Court and Cause.]

AFFIDAVIT.

United States of America  
Western District of Washington  
Northern Division.—ss.

Lyle G. Gray, being first duly sworn, upon his oath deposes and says: That he is one of the co-defendants herein. That he did not meet the defendant, Leong Wing, on the 29th day of January, 1937, or on the 12th day of February, 1937, nor any other time, for the purpose of purchasing or receiving smoking opium, morphine, nor any other narcotic drug. That on the 12th day of February, 1937 your affiant saw the defendant, Leong Wing, in the vicinity of 3rd Ave. and Lenore Street in the city of Seattle, and approached the automobile which the said Leong Wing was driving; that he had opened the door and had partially seated himself and had not yet closed the car door when several Federal agents and officers ran up and seized him and jerked him out of the car and escorted him to a gasoline service station approximately seventy feet away; that upon arriving at said gasoline service station the said officers talked to affiant for a few moments, searched his person and informed him that he was under arrest; that affiant was not present when said officers searched the automobile of said Leong Wing, that nothing was said by said officers to affiant about [88] arrest until after they reached said gasoline service station.

That affiant has never dealt with the said Leong Wing for the purchase or sale of narcotic drugs;



that he has never discussed narcotics in any way whatsoever with the said Leong Wing, that he has never heard or been informed that the said Leong Wing was reputed to be a dealer in narcotics and that he did not know that the said Leong Wing had any narcotics in his possession at that time or at any other time.

That at the time said officers seized and subsequently arrested affiant, neither your affiant or the said Leong Wing had committed any misdemeanor in the presence of said officers, nor committed any act which would give said officers probable cause to believe that the said Leong Wing had committed a felony.

LYLE G. GRAY

Subscribed and sworn to before me this 23 day of March, 1937.

WARREN HARDY

Notary Public in and for the State of Washington,  
residing at Seattle. [89]

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[Title of Court and Cause.]

ORDER FIXING TIME FOR LODGING BILL  
OF EXCEPTIONS.

This matter coming before the Court upon the citation heretofore issued to the respective parties and their attorneys on the 9th day of August, 1937, and both parties being represented by their respective counsel, and the Court having considered the matter in the premises, and after hearing testimony

upon the same and it being fully advised with reference to the facts by the respective counsel, it is hereby

Ordered, Adjudged and Decreed that Leong Chong Wing shall have up to and including the 7th day of October, 1937 in which to procure, to be settled and to file, the Bill of Exceptions, and also to file his Assignment of Errors in his appeal now pending before the United States Circuit Court of Appeals for the Ninth Circuit, and it is further

Ordered, Adjudged and Decreed that the term of court in which said cause was tried be, and hereby is, extended to and including the 7th day of October, 1937, for the purposes herein expressed.

Done in Open Court this 7th day of Sept. 1937.

JOHN C. BOWEN,

Judge.

O. K. as to form:

F. A. PELLEGRINI

Assistant U. S. Attorney.

Presented by:

JOHN F. GARVIN

Attorney for Appellant. [90]

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[Title of Court and Cause.]

CERTIFICATE.

I, John C. Bowen, Judge of the United States District Court for the Western District of Washington, Northern Division, and the Judge before whom the above entitled action was tried, to-wit:

The Cause entitled United States of America versus Leong Chong Wing, defendant, do hereby certify that on this 7th day of October, 1937, and within the term in which the judgment in the above entitled cause was entered and extended according to law, and within the time limited by law and the rules of this Court and the Circuit Court of Appeals of the United States for the Ninth Circuit, and of the Supreme Court of the United States as extended by the order of the trial Judge herein as set forth in the foregoing pages, came on regularly for hearing and settlement of the Bill of Exceptions herein, and that the above and foregoing Bill of Exceptions was prior thereto duly and regularly lodged with the Clerk of the said Court, and duly and regularly and timely served within the time authorized by law upon the United States District Attorney for this district, and was on this date brought to the personal attention of the trial Judge, and that no amendments were [91] proposed to the said Bill of Exceptions, and that due and regular notice of the time for settlement and certifying the said Bill of Exceptions was given and the Court being fully advised,

It Is Ordered that the foregoing Bill of Exceptions, consisting of pages 1 to 44, inclusive, contain all of the evidence introduced upon the trial of the above entitled action "necessary to present clearly the questions of law involved in the rulings to which exceptions were reserved."

And Now Therefore the said and foregoing Bill of Exceptions is hereby Settled, Allowed, Certified, and Filed as the Bill of Exceptions, and as such is made a part of the record in the above entitled cause.

Done in open court this 7th day of October, 1937.

JOHN C. BOWEN

United States District Judge.

O K as to form.

JOHN F. GARVIN

J. CHAS. DENNIS

U. S. Attorney.

[Endorsed]: Lodged and filed Oct. 7, 1937. [92]

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[Title of Court and Cause.]

### ASSIGNMENTS OF ERROR.

Comes now the appellant, Leong Chong Wing, and in support of his appeal herein submits the following Assignments of Error as basis for the reversal of the judgment and sentence imposed upon him in the above entitled court on the 5th day of August, 1937, in the above entitled cause:

#### I.

That the court erred in failing to grant defendant's motion to suppress.

#### II.

That the court erred in admitting Government's Exhibit 1 in evidence.



III.

That the court erred in not granting a mistrial because of misconduct.

IV.

That the court erred in not directing a verdict of not guilty for the defendant Wing.

Dated at Seattle, Washington, this 7th day of October, 1937.

JOHN F. GARVIN

Attorney for the Appellant. [93]

Received a copy of the within assignments this 7th day of October, 1937.

G. CHARLES DENNIS

Attorney for Respondent.

[Endorsed]: Filed Oct. 7, 1937. [94]

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[Endorsed]: No. 8650. United States Circuit Court of Appeals for the Ninth Circuit. Leong Chong Wing, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Western District of Washington, Northern Division.

Filed October 27, 1937.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

